

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODNEY LEE BIGLER,

No. C 09-02498 SBA (PR)

**Plaintiff,**

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

V.

OFFICER DANIEL FORBUS, et al.,

## Defendants.

Plaintiff requests the appointment of counsel to represent him in this action.

18 There is no constitutional right to counsel in a civil case unless an indigent litigant may lose  
19 his physical liberty if he loses the litigation. See Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 25  
20 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in  
21 § 1983 action), withdrawn in part on other grounds on reh'g en banc, 154 F.3d 952 (9th Cir. 1998)  
22 (en banc). The court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only  
23 in "exceptional circumstances," the determination of which requires an evaluation of both (1) the  
24 likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se  
25 in light of the complexity of the legal issues involved. See id. at 1525; Terrell v. Brewer, 935 F.2d  
26 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of  
27 these factors must be viewed together before reaching a decision on a request for counsel under  
28 § 1915. See id.

1       The Court is unable to assess at this time whether exceptional circumstances exist which  
2 would warrant seeking volunteer counsel to accept a pro bono appointment. The proceedings are at  
3 an early stage and it is premature for the Court to determine Plaintiff's likelihood of success on the  
4 merits. Moreover, Plaintiff has been able to articulate his claims adequately pro se in light of the  
5 complexity of the issues involved. See Agyeman v. Corrs. Corp. of Am., 390 F.3d 1101, 1103 (9th  
6 Cir. 2004). Accordingly, the request for appointment of counsel at this time is DENIED. This does  
7 not mean, however, that the Court will not consider appointment of counsel at a later juncture in the  
8 proceedings, that is, after Defendants have filed their dispositive motion and the Court has a better  
9 understanding of the procedural and substantive matters at issue. Therefore, Plaintiff may file a  
10 renewed motion for the appointment of counsel after Defendants' dispositive motion has been filed.  
11 If the Court decides that appointment of counsel is warranted at that time, then it can seek volunteer  
12 counsel to agree to represent Plaintiff pro bono.

13       This Order terminates Docket no. 9.

14       IT IS SO ORDERED.

15 DATED: 8/27/09

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 RODEY LEE BIGLER,

5 Plaintiff,

6 v.

7 DEANIEL FORBUS et al,

8 Defendant.

Case Number: CV09-02498 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on August 27, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

13  
14  
15 Rodney Lee Bigler G25351  
16 California State Prison - San Quentin  
San Quentin, CA 94974

17 Dated: August 27, 2009

18 Richard W. Wiking, Clerk  
By: LISA R CLARK, Deputy Clerk